

Senate Bill 313

By: Senators Thomas of the 54th, Unterman of the 45th, Goggans of the 7th and Hawkins of the 49th

A BILL TO BE ENTITLED
AN ACT

1 To amend Article 2 of Chapter 34 of Title 43 of the Official Code of Georgia Annotated,
2 relating to physicians, so as to authorize the Composite State Board of Medical Examiners
3 to enter into a contract with a nonprofit corporation to conduct impaired physicians
4 programs; to provide for legislative findings; to provide for a definition; to provide for
5 functions and responsibilities of the nonprofit contractor; to provide for immunity; to provide
6 for confidentiality of reports; to provide for reports to the board by the nonprofit contractor;
7 to provide for related matters; to repeal conflicting laws; and for other purposes.

8 BE IT ENACTED BY THE GENERAL ASSEMBLY OF GEORGIA:

9 **SECTION 1.**

10 Article 2 of Chapter 34 of Title 43 of the Official Code of Georgia Annotated, relating to
11 physicians, is amended by revising subsection (h) of Code Section 43-34-21, relating to
12 creation of the Composite State Board of Medical Examiners, as follows:

13 "(h) ~~The~~ In addition to the authority granted pursuant to Code Section 43-34-21.1, the
14 board shall have the authority to contract with medical associations or other professionally
15 qualified organizations to conduct impaired physicians programs."

16 **SECTION 2.**

17 Said article is further amended by adding a new Code section to read as follows:

18 "43-34-21.1.

19 (a) It shall be the duty and obligation of the board to promote the early identification,
20 intervention, treatment, and rehabilitation of physicians licensed to practice medicine in
21 this state who may be impaired by reason of illness or use of alcohol, drugs, narcotics,
22 chemicals, or any other type of material, or as a result of any mental or physical condition.

23 (b) For the purposes of this Code section, the term 'impaired' means the inability of a
24 physician to practice medicine with reasonable skill and safety to patients by reason of

1 illness or use of alcohol, drugs, narcotics, chemicals, or any other type of material, or as
2 a result of any mental or physical condition.

3 (c) The board shall have the authority to enter into a contract with a nonprofit corporation
4 to conduct impaired physicians programs as those functions and responsibilities are
5 specified in the contract. Such functions and responsibilities may include any or all of the
6 following:

7 (1) Contracting with providers of treatment programs;

8 (2) Receiving and evaluating reports of suspected impairment from any source;

9 (3) Intervening in cases of verified impairment;

10 (4) Referring impaired physicians to treatment programs;

11 (5) Monitoring the treatment and rehabilitation of impaired physicians;

12 (6) Providing post-treatment monitoring and support of rehabilitated impaired
13 physicians;

14 (7) Performing other duties related to paragraph (13) of subsection (a) of Code Section
15 43-34-37; and

16 (8) Performing such other related activities as determined by the board.

17 (d) Any nonprofit corporation that contracts with the board for the performance of any
18 functions or duties pursuant to this Code section and in accordance with the terms of the
19 contract shall, in so doing, be immune from any liability, civil or criminal, that might
20 otherwise be incurred or imposed.

21 (e) All information, interviews, reports, statements, memoranda, or other documents
22 furnished to or produced by the nonprofit corporation; any findings, conclusions,
23 recommendations, or reports resulting from the investigations, interventions, treatment, or
24 rehabilitation; or other proceedings of such nonprofit corporation are declared to be
25 privileged and confidential and shall not be subject to Article 4 of Chapter 18 of Title 50,
26 relating to open records. All records and proceedings of such nonprofit corporation shall
27 be confidential and shall be used by such nonprofit corporation and the members thereof
28 only in the exercise of the proper function of the nonprofit corporation and shall not be
29 public records nor available for court subpoenas or for discovery proceedings.

30 (f) The nonprofit corporation shall report to the board any physician who in the opinion
31 of the nonprofit corporation is unable to practice medicine with reasonable skill and safety
32 to patients by reason of illness or use of alcohol, drugs, narcotics, chemicals, or any other
33 type of material, or as a result of any mental or physical condition when it appears that such
34 physician is currently in need of intervention, treatment, or rehabilitation and such
35 physician has failed or refused to participate in programs of treatment or rehabilitation
36 recommended by the nonprofit corporation. In any report to the board made pursuant to
37 the requirements of this subsection, the nonprofit corporation may forward to the board any

1 and all reports, evaluations, treatment records, medical records, documents, or information
 2 relevant to the physician upon whom the report is made, unless specifically prohibited by
 3 federal law or regulation, notwithstanding any law or regulation of this state declaring that
 4 such evaluations, information, treatment records, medical records, documents, or reports
 5 are confidential or privileged. All such information, evaluations, documents, reports,
 6 treatment records, or medical records received by the board in a report submitted pursuant
 7 to this subsection shall be privileged and confidential and shall not be public records nor
 8 available for court subpoenas or for discovery proceedings but may be used by the board
 9 in the course of its investigations and may be introduced as evidence in administrative
 10 hearings conducted by the board.

11 (g) If the board has reasonable cause to believe that a physician is impaired, the board may
 12 cause an evaluation of such physician to be conducted by the nonprofit corporation for the
 13 purpose of determining if there is an impairment. The nonprofit corporation shall report the
 14 findings of its evaluation to the board."

15 SECTION 3.

16 Said article is further amended in Code Section 43-34-37, relating to authority to refuse
 17 license or discipline a physician, by revising paragraph (13) of subsection (a) as follows:

18 "(13) Become unable to practice medicine with reasonable skill and safety to patients by
 19 reason of illness or use of alcohol, drugs, narcotics, chemicals, or any other type of
 20 material, or as a result of any mental or physical condition:

21 (A) In enforcing this paragraph the board may, upon reasonable grounds, require a
 22 licensee or applicant to submit to a mental or physical examination by physicians
 23 designated by the board. The results of such examination shall be admissible in any
 24 hearing before the board, notwithstanding any claim of privilege under a contrary rule
 25 of law or statute, including, but not limited to, Code Section 24-9-21. Every person
 26 who shall accept the privilege of practicing medicine in this state or who shall file an
 27 application for a license to practice medicine in this state shall be deemed to have given
 28 ~~his~~ consent to submit to such mental or physical examination and to have waived all
 29 objections to the admissibility of the results in any hearing before the board, upon the
 30 grounds that the same constitutes a privileged communication. If a licensee or
 31 applicant fails to submit to such an examination when properly directed to do so by the
 32 board, unless such failure was due to circumstances beyond his or her control, the board
 33 may enter a final order upon proper notice, hearing, and proof of such refusal. Any
 34 licensee or applicant who is prohibited from practicing medicine under this paragraph
 35 shall at reasonable intervals be afforded an opportunity to demonstrate to the board that

1 he or she can resume or begin the practice of medicine with reasonable skill and safety
2 to patients;

3 (B) For the purposes of this paragraph, the board and a nonprofit corporation which has
4 entered into a contract with the board pursuant to Code Section 43-34-21.1, if provided
5 for in the contract, may, upon reasonable grounds, obtain any and all records relating
6 to the mental or physical condition of a licensee or applicant, including psychiatric
7 records; and such records shall be admissible in any hearing before the board,
8 notwithstanding any privilege under a contrary rule of law or statute, including, but not
9 limited to, Code Section 24-9-21. Every person who shall accept the privilege of
10 practicing medicine in this state or who shall file an application to practice medicine in
11 this state shall be deemed to have given ~~his~~ consent to the board's obtaining any such
12 records and to have waived all objections to the admissibility of such records in any
13 hearing before the board, upon the grounds that the same constitute a privileged
14 communication; and

15 (C) If any licensee or applicant could, in the absence of this paragraph, invoke a
16 privilege to prevent the disclosure of the results of the examination provided for in
17 subparagraph (A) of this paragraph or the records relating to the mental or physical
18 condition of such licensee or applicant obtained pursuant to subparagraph (B) of this
19 paragraph, all such information shall be received by the board in camera and shall not
20 be disclosed to the public, nor shall any part of the record containing such information
21 be used against any licensee or applicant in any other type of proceeding.

22 In enforcing this paragraph, a nonprofit corporation which has entered into a contract
23 with the board pursuant to Code Section 43-34-21.1 shall be authorized to perform any
24 functions or duties provided under this paragraph if specifically provided in the contract."

25 SECTION 4.

26 All laws and parts of laws in conflict with this Act are repealed.